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Supreme Court, U. S.
FILED
MAR 22 1971
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 70-322

In the Matter of the Imprisonment of
William B. Warren,

Petitioner.

****

ON WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF CASWELL COUNTY,
NORTH CAROLINA

****

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

****

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NOW COMES William B. Warren, the petitioner in the above-entitled proceeding, and through his undersigned counsel respectfully shows unto the Court:

On June 29, 1972, the Court entered the following order in this proceeding:

> The petition for a writ of certiorari is denied. Mr. Justice Douglas would grant certiorari, vacate the judgment below, and remand the case for further consideration in light of his dissenting opinion in Morrissey v. Brewer, ____ U.S. ____ (1972).

The majority opinion in Morrissey v. Brewer, decided June 29, 1972, set out as minimum due process requirements for parole revocation, (1) prior notice of a

hearing, (2) written statement of the claimed violations of parole, (3) a hearing near the place of the alleged parole violation, (4) disclosure to the parolee of the evidence against him, (5) opportunity for the parolee to be heard in person and to present witnesses and documentary evidence, (6) the right of the parolee to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), (7) a "neutral and detached" hearing body, and (8) a written statement by the fact finders as to evidence relied on and reasons for revoking parole.

In the dissenting opinion of Mr. Justice Douglas in Morrissey v. Brewer, additional requirements for revocation of parole were proposed, including (1) right to counsel, (2) disqualification of the parole officer as a hearing officer (in those jurisdictions where he has prosecutorial and police functions), (3) an unqualified right of confrontation, and (4) right to remain at liberty until the final revocation order following the hearing is given by the parole board.

It is respectfully submitted that the facts in the instant petition mandate relief under the majority opinion in Morrissey v. Brewer. Here, as expressly authorized by N.C.G.S. 148-61.1, the North Carolina Board of Paroles entered an ex parte order revoking petitioner's parole and ordering his arrest; petitioner was thereupon taken into custody and recommitted to the North Carolina Department of Correction. There was no notice and

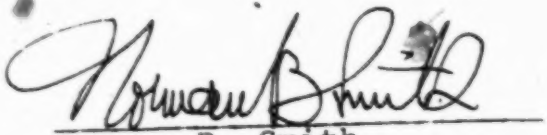
hearing before the parole revocation. Here, unlike the cases consolidated in Morrissey v. Brewer, there is no allegation that a revocation hearing was given after petitioner was returned to prison; in fact there was no hearing at any time. Here petitioner made no admission of parole violation that was included in the parole officer's report, so that the Court's suggestion in Morrissey v. Brewer that the admissions might form a sufficient basis for revocation, is not applicable in the instant cause. This petitioner could not have made an admission of violating his parole, because to this day he has not been informed of the reasons for the revocation of his parole!

The revocation of petitioner's parole was on April 8, 1970, and the habeas corpus hearing in Superior Court, which is here for review, was on October 7, 1970; it cannot be contended that this hearing was a substitute for a revocation hearing, since the reasons for the revocation and facts to support these reasons were not a part of that proceeding, and in the habeas corpus proceeding the only issues were whether the state had the right to revoke petitioner's parole without notice or hearing.

The decision of the lower court cannot be sustained when viewed in light of the majority opinion in Morrissey v. Brewer.

WHEREFORE, petitioner petitions the Court for a rehearing of his petition for

writ of certiorari, as provided in Rule 58.2 of the Rules of the Supreme Court of the United States.



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CERTIFICATE OF COUNSEL

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The undersigned counsel for petitioner hereby certifies, in accordance with Rule 58.2 of the Rules of the Supreme Court of the United States, that the foregoing petition for rehearing of petition for writ of certiorari in this proceeding is presented in good faith and not for delay. The undersigned further certifies that the grounds for the petition consist of intervening circumstances of substantial or controlling effect, and substantial grounds available to petitioner although not previously presented, in that the denial of petition for certiorari appears to have been erroneous and inconsistent with the majority opinion in Morrissey v. Brewer, ____ U.S. ____ (1972), which was rendered the same day that petition for certiorari was denied in this cause.

Howard B. Smith

Counsel for Petitioner
Norman B. Smith
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& Curtis

CERTIORARI DENIED